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Criminal accountability of United Nations officials and experts on mission

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Report of the Secretary-General

Summary

The present report has been prepared pursuant to paragraphs 15, 16 and 17 of General Assembly resolution 64/110. Sections II and III provide information received from Governments on the extent to which their national laws establish jurisdiction, in particular over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission, as well as information on cooperation among States and with the United Nations in the exchange of information and the facilitation of investigations and prosecution of such individuals. Sections IV, V and VI provide information concerning activities within the Secretariat in relation to the resolution.

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I. Introduction

1. In its resolution 64/110, the General Assembly requested the Secretary-General to report on the implementation of the resolution, in particular with respect to paragraphs 3, 5 and 9, as well as any practical problems in its implementation, on the basis of information received from Governments and the Secretariat.

2. The present report provides information on efforts undertaken in that regard. Sections II and III deal with activities and information received relating to the criminal accountability of United Nations officials and experts on mission, as required by paragraphs 3, 4, 5 and 9. By a note verbale dated 8 January 2010, the Secretary-General drew the attention of all States to resolution 64/110 and requested them to submit relevant information. As at 1 July 2010, replies had been received from 18 States.

3. Sections IV, V and VI of the report relate to activities undertaken within the Secretariat in the implementation of paragraphs 9 to 13 and 17 of the resolution, focusing in particular on information regarding the bringing of credible allegations that reveal that a crime may have been committed by United Nations officials to the attention of States against whose nationals such allegations are made, as well as assistance and training.

4. The present report should be read together with the 2008 and 2009 reports of the Secretary-General on the same subject (A/63/260 and Add.1 and A/64/183 and Add.1).

II. Establishment of jurisdiction over crimes of a serious nature

5. **Australia** reiterated the information provided in paragraphs 5 and 6 of document A/63/260, noting further that the Crimes (Overseas) Act 1964 would apply, for example, extraterritorially to Australian Federal Police deployed as United Nations police who were covered by the immunities provided for in the Convention on the Privileges and Immunities of the United Nations (General Assembly resolution 22 A (I) of 13 February 1946). To date, there had been no prosecutions under the Act.

6. It was further noted that offences under the Defence Force Discipline Act 1982, which covered Australian Defence Force members, could be broadly divided into three categories: unique military offences (such as insubordination), offences with a civilian equivalent (such as theft or assault) and imported criminal offences (known as territory offences). The imported criminal offences incorporated into the Defence Force Discipline Act a range of offences criminalized under the Crimes Act 1914, the Criminal Code Act 1995 and the criminal laws of the Australian Capital Territory. The incorporation into the Defence Force Discipline Act of such offences ensured that Australian military personnel were criminally accountable for a comprehensive range of offences. Ongoing Australian domestic law reform of those incorporated Acts ensured that the accountability of military personnel remained consistent with broader Australian civilian standards.

7. Moreover, as provided for in the United Nations model status-of-forces agreement, members of national military contingents serving in peacekeeping missions were subject to the exclusive jurisdiction of the sending State. It was

Australian practice to seek immunity from local law or prosecution for Australian Defence Force personnel serving in peacekeeping missions. Depending on the circumstances of Australian involvement, the immunity provided by the instrument setting out the legal basis for Australian personnel in a host State (either a status-of-forces agreement or a memorandum of understanding) might range from limited military discipline jurisdiction immunity only through to complete immunity from local jurisdiction. Where a status-of-forces agreement or memorandum of understanding was in force to provide local immunity for military personnel, the Defence Force Discipline Act was in place to ensure criminal accountability.

8. Under the penal law of **the Plurinational State of Bolivia**, the location where an act has been committed is the prevailing factor; the question whether national or international impunity applies does not come into play. In accordance with article 1 of the Penal Code, the Code applies to (a) crimes committed in Bolivian territory or in localities under its jurisdiction; (b) crimes committed abroad which have produced or were intended to produce results in the territory of the Plurinational State of Bolivia or in localities under its jurisdiction; (c) crimes committed abroad by a Bolivian, provided that he or she is in the national territory and has not been punished in the locality where the crime was committed; (d) crimes committed abroad against State security, public trust and the national economy (this covers foreign nationals if they have been extradited or are found in Bolivian territory); (e) crimes committed on board Bolivian vessels, aircraft or other means of transport in a foreign country, if they have not been prosecuted in that country; (f) crimes committed abroad by Bolivian civil servants in the performance of their duties; and (g) crimes that the Plurinational State of Bolivia is required by treaty or convention to punish, even if they were not committed in its territory.

9. The Plurinational State of Bolivia has been a party to the Convention on the Privileges and Immunities of the United Nations since 23 December 1949. The Plurinational State of Bolivia recognizes that, pursuant to Article 104 of the Charter of the United Nations, the Organization enjoys in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes and that, by virtue of articles VI and VII of the Convention, its officials enjoy such privileges and immunities as are necessary for the independent exercise of their functions in the service of the Organization, in the interests of the United Nations and not for the personal benefit of the individuals themselves.

10. Furthermore, under the 2007 agreement between the Plurinational State of Bolivia and the United Nations High Commissioner for Human Rights, officials of the Office of the High Commissioner are immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the Office. They are immune from inspection and seizure of their official baggage.

11. Nevertheless, crimes are prosecuted and punished no matter who the perpetrator is, and the Penal Code applies that rule to officials of Bolivian nationality who commit crimes.

12. Under article 3 (2) of the Penal Code and article 5 of the Penal Procedural Code of **Bulgaria**, the responsibility of aliens who enjoy immunity from criminal jurisdiction in Bulgaria is decided in conformity and performed in accordance with the rules of international law. Accordingly, the staff of international organizations,

including officials of the United Nations and experts performing expert missions for the United Nations, who may be foreign or Bulgarian nationals can be included within the scope of these provisions. Bulgaria is a party to the Convention on the Privileges and Immunities of the United Nations, and its provisions are, by virtue of the Bulgarian Constitution, part of the domestic law and can be applied by Bulgarian courts directly. In accordance with the provisions of the Convention, officials of the United Nations and experts on mission for the United Nations enjoy functional immunity. Such immunity ensures the impartial and unobstructed exercise of their official functions in the interests of the organization for which they work, while effectively allowing them to be held criminally liable on an equal footing for all criminal acts committed by them outside their official functions. The need to guarantee all prerequisites for the impartial execution of the official duties of United Nations officials and experts justifies the fact that they enjoy immunity not only in respect of the criminal jurisdiction of the receiving State but also of the State of their nationality.

13. In accordance with the Convention, the Secretary-General has the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and without prejudice to the interests of the United Nations. If such a waiver is refused, the criminal prosecution can proceed only after the expiry or early termination of the credentials of the official or expert concerned.

14. **China** has jurisdiction in cases of serious violations of the provisions of its Criminal Law by Chinese citizens during their terms of service as United Nations officials or experts on mission. Article 6 of the Criminal Law of China provides that that Law shall be applicable to anyone who commits a crime within the territory of China, except as otherwise specifically provided by law; while article 7 states that the Law shall be applicable to any citizen of China who commits a crime prescribed in the Law outside the territory of China. However, if the maximum punishment to be imposed is fixed-term imprisonment of not more than three years as stipulated in the Law, that person may be exempted from investigation for criminal responsibility. The Law is applicable to any State functionary or serviceman who commits a crime prescribed in the Law outside the territory of China.

15. Chinese judicial authorities will investigate and prosecute United Nations officials or experts on mission suspected of serious crimes in accordance with the provisions of the Criminal Procedure Law, the Extradition Law and the Regulations Concerning Diplomatic Privileges and Immunities, and in accordance with applicable arrangements for cooperation with foreign and United Nations authorities. China will also abide by the provisions of international treaties to which it is already a party, including the Vienna Convention on Diplomatic Relations and the Convention on the Privileges and Immunities of the United Nations. If the body investigating and prosecuting United Nations officials or experts on mission suspected of serious crimes is an international judicial body, the prerequisites for China's cooperation with that body are that China be a party to an applicable international treaty or obligated to implement an applicable resolution, or that it agrees to bear the obligation to cooperate on a case-by-case basis.

16. **Cyprus** reiterated the information concerning the extraterritorial application of its Criminal Code as found in paragraph 13 of document A/63/260. It also made reference to its other laws containing specific provisions for extraterritorial

application, including the United Nations Convention against Transnational Organized Crime and Protocols (Ratification) Law, Law No. 11(III)/2003; the Optional Protocol to the United Nations Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography (Ratification) Law, Law No. 6(III)/2006; the Prevention and Suppression of Money Laundering Activities Law, Law No. 188(I)/2007; and the Suppression of Trafficking and Exploitation of Human Beings and Protection of Victims Law, Law No. 87(I)/2007. It confirmed that its legislative framework satisfactorily addresses the issue of jurisdiction over crimes of a serious nature committed by its citizens while serving abroad on a United Nations mission, without prejudice to any privileges and immunities such persons may enjoy under international law binding on Cyprus.

17. **El Salvador** noted that, at the domestic level, any Salvadoran serving in United Nations missions who committed sexual or other crimes under domestic law could be prosecuted in El Salvador before criminal courts (under articles 8 and 9 of the Code of Criminal Procedure) and military tribunals (under article 185 of the Code of Military Justice), both of which had concurrent jurisdiction under the principle of territoriality.

18. **Estonia** noted that its penal law was applicable if a crime was committed outside Estonian territory and when certain requirements were fulfilled as set forth in section 7 of its Penal Code. In particular, it applied if such an act complied with double criminality requirements and if (a) the act was committed against an Estonian; (b) the offender was Estonian or an alien who had been detained in Estonia and was not extradited.

19. In addition to the information provided in paragraph 44 of document A/63/260 and paragraphs 1 to 6 of document A/64/183/Add.1, **Finland** noted that its comprehensive crisis management strategy had been adopted and published in November 2009 to strengthen the comprehensive approach in Finnish crisis management activities. The strategy emphasized the importance of addressing human rights in international crisis management activities, paying particular attention to enhancing the status of women and girls and their empowerment. It also affirmed zero tolerance of misconduct or human rights violations perpetrated by personnel operating in international crisis management missions. All allegations of criminal behaviour would be investigated and confirmed cases of misconduct would be subject to appropriate legal sanction. The strategy also reaffirmed Finland's commitment to the promotion of the establishment of a common criminal accountability regime for United Nations crisis management personnel.

20. Further to information set out in paragraphs 11 to 13 of document A/64/183, **Guatemala** observed that crimes of a serious nature were the most serious offences under the domestic legal system. Under international law, crimes of a serious nature were punishable crimes that were prohibited under treaties on international human rights law, international humanitarian law and international criminal law. Such crimes include serious violations of human rights and of humanitarian law.

21. Such crimes were punishable under various treaties and Guatemala's domestic criminal legislation also deemed some of them to be crimes of a serious nature. For example, extrajudicial execution, torture, enforced disappearance and genocide were punishable under articles 132, 201(bis), 201(ter) and 376 of the Penal Code of Guatemala.

22. The various legal provisions of the Penal Code, including articles 4 and 5, as well as articles 40, 43, 52 and 53 of the Code of Criminal Procedure, demonstrated that Guatemala had established jurisdiction over crimes of a serious nature committed abroad by its nationals and that it must apply such jurisdiction as well to cases involving its nationals serving abroad as United Nations officials or experts.

23. **Italy** noted that no specific national legislation for crimes committed by United Nations officials or experts on mission had been introduced after the adoption of resolution 64/110. However, more detailed legislation was in preparation. In February 2010, the Government approved a draft statute enabling it to prepare detailed legislation on a code of crimes for military missions abroad. The Parliament was currently examining the draft statute.

24. Moreover, a special law No. 197 was passed on 29 December 2009, which amended the decree-law No. 152 of 4 November 2009 containing urgent measures for an extension of cooperative interventions for the development and support of peace and stabilization processes and the extension of international missions of the armed forces and the police (published in the Official Gazette No. 303 of 31 December 2009). It includes provisions that may be relevant for the purpose of establishing criminal responsibility of Italian nationals involved in United Nations missions. Through article 4, paragraph 1, of the decree, with reference to criminal matters in international missions of the armed forces and the police (including United Nations missions) it is established, inter alia, that the Code of Military Criminal Law in Peace and other laws specified in the decree will be applied to military personnel participating in international missions.

25. Further, the ordinary rules on crimes committed by Italian nationals abroad and by foreigners abroad, as well as the conditions for the exercise of jurisdiction, apply to United Nations officials and experts on mission on condition that the relevant immunities do not bar prosecution. Also, on the basis of the principle of universal jurisdiction and according to the Italian legal system, in particular article 7 of the Criminal Code, punishment of international crimes is applied only when the alleged offender is found on Italian territory.

26. **Iraq** stated that the rules and regulations that the General Assembly enjoined Member States to observe with paragraphs 3 and 4 of resolution 64/110 already existed in Iraqi legislation. The laws of Iraq applied to Iraqis serving as United Nations officials or experts on mission notwithstanding any immunity granted by the State wherein the incriminating act was perpetrated (see also A/63/260/Add.1). Iraqi courts could use evidence obtained from the State concerned or from the United Nations or any other sources.

27. **Kenya** noted that, under its Constitution, the jurisdictional scope of the Constitution and all other laws was limited to the territorial boundaries of Kenya. Any person who, for the time being was resident in Kenya, would enjoy protection and security under the law consistent with the rights and fundamental freedoms guaranteed by the Constitution. The scope of those provisions included United Nations officials and experts on mission within Kenya, including Kenyan nationals. However, in view of the territorial scope of the jurisdiction, Kenyan nationals who, while working as United Nations officials or experts on mission outside Kenya, committed serious criminal offences would not be covered unless the crimes committed fell within the scope of the universality principle. Although the set-up under the Constitution did not permit Kenya to exercise jurisdiction

extraterritorially, it would permit the investigation and prosecution of crimes within Kenya. Through cooperation and facilitation of the conduct of investigations, any United Nations official or expert on mission could be brought to face the legal consequences of his or her actions.[1]

28. Kenya also noted that serious crimes such as murder and robbery with violence were proscribed by the Penal Code; rape was prescribed by the Sexual Offences Act (No. 3 of 2006). Moreover, the International Crimes Act (No. 16 of 2008) made provision for the punishment of genocide, crimes against humanity and war crimes, while the Merchant and Shipping Act covered piracy in Kenyan territorial waters or on Kenyan-registered vessels.

29. **Mexico** restated its position as reflected in paragraphs 16 to 18 of document A/64/183.

30. **Panama** noted that under its Penal Code, diplomatic staff, including representatives of the United Nations, enjoyed immunity from legal process. The provisions of the Penal Code covering crimes against humanity (articles 421 to 449) and the offence of enforced disappearance nevertheless applied to all persons without distinction. However, by virtue of immunities and privileges tenable, such provisions did not apply to representatives of the United Nations and other diplomatic officials, even though Panama was also a party to the Rome Statute of the International Criminal Court.

31. **Paraguay** noted that, under its Criminal Code, its criminal law applied to all punishable acts committed in the national territory or on board Paraguayan vessels or aircraft. Similarly, the criminal law applied to punishable acts committed abroad by a Paraguayan holder of public office in the performance of his or her functions. For such acts to be punishable (a) they should meet double criminality requirements; and (b) the perpetrator should be a national of Paraguay at the time of the act or have acquired its nationality after commission of the act. If not possessing Paraguayan nationality, such person should be present in the national territory and extradition refused. In the case of a conviction, the penalty may not exceed that established by the legislation in force at the place of commission of the act. Furthermore, the criminal law applied to punishable acts which Paraguay, under an international treaty in force, was obliged to prosecute although they had been committed abroad, in which case the law would apply once the perpetrator had returned to the national territory.

32. Despite the above provisions, in view of immunities and privileges enjoyed by certain officials under international law, Paraguay was cognizant of the procedural possibility that there could be a legal impediment to the prosecution of any such officials who committed a series of punishable acts under cover of their immunity.

33. **Peru** noted that, in addition to the national territorial scope of its criminal law, its Criminal Code provided that the law applied to any offence committed abroad when (a) the perpetrator was a public official or civil servant in the performance of his or her duties; (b) it threatened public security or public order, provided that the effects occurred in the territory of Peru; (c) it was detrimental to the State and to national defence, the State authorities and the constitutional order, or the financial system; (d) it was perpetrated against a Peruvian national or by a Peruvian national

[1] For previous comments of Kenya, see A/63/260, paras. 24 and 47.

and the offence was subject to extradition under Peruvian law, provided that it was also punishable in the State in which it was committed and the perpetrator entered Peruvian territory; and (f) Peru was obliged to suppress it under international treaties.

34. **Portugal** reiterated its position as reflected in paragraphs 19 to 22 of document A/64/183. It confirmed, in particular, that it would criminally prosecute a United Nations official or an expert on mission, whose immunity had been waived, for acts committed in or outside the Portuguese territory, under specified conditions.

35. **Qatar** noted that it strongly supported General Assembly resolution 64/110, stressing that the implementation of its provisions was an essential step towards achieving justice and guarding against impunity. It confirmed that the general rules of criminal jurisdiction were addressed in Law No. 11 of 2004 of the Penal Code. Articles 12 to 19 of the Penal Code addressed crimes that might be perpetrated by Qatari citizens working as United Nations officials and experts on mission (see also A/63/260, para. 30). Qatar had participated in the United Nations Interim Force in Lebanon (UNIFIL) and no violations or crimes by Qataris had been reported.

36. The **Republic of Korea** reiterated the information contained in paragraph 24 of document A/63/260 and affirmed that its authorities possessed the ability to exercise criminal jurisdiction over crimes committed by the nationals of the Republic of Korea irrespective of their status as United Nations officials or experts on mission.

37. **Slovakia** noted that its national legal system included laws which to a large extent covered issues regulated by resolution 64/110; those were mainly included in the Code of Criminal Procedure, Act No. 301/2005 Coll., as amended.

38. **Slovenia** stated that the general principles of criminal law as contained in its Criminal Code, in particular articles 11, 12, 13 and 14, applied to Slovenian nationals who might commit a criminal offence in their capacity as officials of the United Nations or as experts on mission.

III. Cooperation between States and with the United Nations in the exchange of information and the facilitation of investigations and prosecutions

39. Further to information provided in paragraph 38 of document A/63/260, **Australia** noted that when it contributed to United Nations peacekeeping missions, it was usual practice that the memorandum of understanding concluded with the United Nations for each mission required members of the Australian contingent to cooperate with the United Nations in any United Nations investigations of suspected misconduct by Australian personnel.

40. To date there were 27 bilateral treaties and multilateral conventions to which Australia was a party that contained mutual assistance provisions.

41. No mutual assistance requests had yet been received from other States regarding the investigation of United Nations officials or experts on mission.

42. Australia's capacity to prosecute Australian nationals for alleged crimes committed while serving as United Nations officials or experts on mission abroad

could be compromised in instances where the alleged offender fled to a country with which Australia did not have an extradition relationship, either under a bilateral extradition agreement or other relevant treaty. Australia already had in place a strong domestic framework for receiving and making extradition requests from other countries, established by the 1988 Extradition Act. To complement that legislation, Australia continued to pursue workable and effective extradition agreements with other countries, and currently had modern bilateral treaties in place with 35 countries.

43. Australia's legislative framework aimed to ensure that there was no criminal jurisdictional gap where immunities had been granted to Australians in foreign countries.

44. Under the Code of Criminal Procedure of **Bolivia**, the greatest possible assistance shall be afforded in response to requests from foreign authorities, provided that such requests are effected in accordance with the provisions of its Political Constitution, international treaties in force and the provisions of the Code. Requests for cooperation shall be submitted through the Ministry of Foreign Affairs and Worship.

45. The Penal Code addresses questions concerning extradition, providing in part that no person subject to Bolivian law shall be handed over to another State for extradition unless otherwise specified by an international treaty or reciprocal agreement. Where a reciprocal arrangement exists, extradition depends on dual criminality requirements. The validity or invalidity of an extradition is to be determined by the Supreme Court. Foreign nationals residing in Bolivian territory are subject to the same requirements, except where otherwise provided by treaties or the law of nations in respect of diplomats.

46. In implementing international treaties, conventions and agreements to which it is a party, Bolivia is prepared to respond adequately to requests by host States for support and assistance in order to enhance their capacity to conduct effective investigations of crimes of a serious nature relating to all persons alleged to have committed crimes.

47. As regards evidence, the Code of Criminal Procedure of Bolivia provides that evidence shall have value only if it has been obtained lawfully and has been introduced in the proceedings in accordance with the provisions of the Constitution and the Code. Evidence obtained by torture, ill-treatment, force, threats, deceit or violation of the fundamental rights of the person, or obtained using information originating from unlawful procedures or means, shall have no probative value.

48. Also under the Code of Criminal Procedure, the National Police, when investigating crimes, are responsible for identifying and apprehending alleged perpetrators, identifying and assisting victims, collecting and securing evidence and serving all orders as instructed by the public prosecutor in charge of the investigation; they shall also keep the competent bodies informed about the proceedings. They shall also assist victims and protect witnesses.

49. Moreover, pursuant to the Public Prosecutor's Office Organization Act, Law No. 2175 of 13 February 2001, the Public Prosecutor's Office shall protect persons who are at risk of harm as a result of having cooperated in the administration of justice. Such protection shall be provided in particular in respect of offences involving organized crime, abuse of power or violation of human rights. To that end,

the Office shall have an ongoing programme to protect witnesses, victims and officials of the Office.

50. The Code of Criminal Procedure defines the various categories of victims: persons directly affected by a crime; spouses or partners, blood relatives up to the fourth degree of consanguinity or second degree of kinship, adoptive children and/or parents' testamentary heirs, where the crime results in the death of the victim; legal persons affected by the crime; and legally constituted foundations and associations, where the crime affects collective or widespread interests, provided that the purpose of the foundation or association has a direct bearing on those interests.

51. China has signed many bilateral treaties on judicial assistance in criminal cases and on extradition, and is a party to the United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime, and other such international instruments. When investigating and prosecuting crimes by United Nations officials or experts on mission, the Government of China may apply those instruments to cooperate with foreign countries in legal assistance and extradition matters. Where no such treaty relations exist, the Government of China can cooperate on a reciprocal, case-by-case basis in accordance with the Criminal Procedure Law and the Extradition Law.

52. In accordance with the provisions of the Criminal Procedure Law, all facts that have been legally collected and that prove the true circumstances of a case can be used as evidence in a criminal proceeding. Information and materials used as evidence must be verified by a court of law before being used to decide a case. In criminal proceedings initiated in accordance with Chinese law with regard to serious crimes committed by United Nations officials or experts on mission, information and materials obtained from the United Nations may be used in evidence if it conforms to the provisions of the Criminal Procedure Law.

53. Under the provisions of the Criminal Procedure Law, the Criminal Law and the Extradition Law, victims and witnesses in criminal cases are protected by law. These laws also protect the right of criminal suspects to due process, such as obtaining legal assistance, engaging defence counsel and petitioning for recusal.

54. On cooperation, **Cyprus** provided a list of seven bilateral agreements on extradition (and agreements which include provisions for extradition) and 12 bilateral agreements on legal and judicial cooperation in civil and criminal matters that it had concluded, as well as four relevant multilateral conventions that it had signed and ratified.

55. On witness protection, Cyprus has passed the Protection of Witness Law (No. 95(I)/2001), which provides for special measures for the protection of witnesses, informants of justice and victims of crimes and has created a witness protection programme. The programme is under the direct control and supervision of the Attorney General. This Law could be also applied regarding offences committed by United Nations officials or experts on mission, provided that all the relevant prerequisites are fulfilled.

56. El Salvador noted that mutual assistance in connection with criminal investigations or criminal or extradition proceedings in respect of crimes of a serious nature and criminal conduct committed abroad was of critical importance. Through such cooperation, the perpetrators of crimes could be prosecuted with the requisite guarantees of due process.

57. Crimes of a serious nature, such as sexual exploitation and abuse, by a member of any peacekeeping operation were inimical to the very essence of the peacekeeping mission and brought the Organization he represented into disrepute. Accordingly, such offences should not be viewed as merely common crimes given the attending circumstances, even where they did not necessarily rise to the level of international crimes. El Salvador stressed that it was fully prepared to provide such assistance as was necessary in promoting the adoption of conventions or treaties to help to rapidly attain the goals enunciated in resolution 64/110.

58. Guatemala gave a non-exhaustive list of international conventions to which it was party regarding mutual legal assistance in criminal matters and multilateral and bilateral extradition treaties that addressed such assistance.

59. Guatemala had also adopted a law expressly regulating the extradition process. The non-exhaustive list of national and international instruments demonstrated that Guatemala had adopted legislation focusing on mutual legal assistance in matters such as the exchange of information to facilitate investigations of crimes, including crimes of a serious nature, and on extradition.

60. With regard to investigations and the acquisition of evidence, Italy noted that its Law No. 197 of 29 December 2009 established time limits within which investigations on military carriers, which were used for missions abroad and had been seized, should be completed upon seizure and the circumstances in which a member of the military could not be held punishable during an international mission.

61. In addition, article 696 of the Code of Criminal Procedure provides that extraditions, international requests, the effects of foreign criminal rulings, the execution abroad of Italian criminal sentences and other relations with foreign authorities regarding the administration of justice in criminal matters are regulated by the norms provided by the 1959 European Convention on Mutual Assistance in Criminal Matters and other international conventions adhered to by Italy and those of general international law.

62. Kenya noted that it had structures in place for the exchange of information and to facilitate investigations, as well as provide protection for witnesses and victims of serious offences. Kenya was the host country of the United Nations Environment Programme and had entered into agreements with the International Criminal Court, the International Bank for Reconstruction and Development, the International Monetary Fund and the Asian-African Legal Consultative Organization, among others. Interaction with international institutions was predicated on a legal basis through cooperation or headquarters agreements whose aim was to ensure that such interactions were based on the rule of law.

63. It was also noted that Kenya entered into mutual legal assistance agreements with various States to share information on serious crimes and how to combat them.

64. The Witness Protection Act of Kenya had been enacted to provide for the protection of witnesses in criminal cases and other proceedings.

65. **Mexico** noted that, although the chapter on evidence in the Federal Code of Criminal Procedure did not expressly provide for the possibility of using information and material obtained from the United Nations for purposes of criminal proceedings initiated in the territory of Mexico for the prosecution of crimes of a

serious nature committed by United Nations officials and experts on mission, article 206 of the Federal Code provided that everything offered as evidence could be admitted as such, as long as it was conducive to and is not contrary to the law, in the judgement of the judge or court. The Federal Code also established the formal requirements for admission of evidence. Any proceedings that failed to meet those requirements would be invalid.

66. The Federal Organized Crime Act of Mexico provided for witness and other protection. The Act was only applicable when dealing with organized crime. It could, however, be used to protect witnesses and others who provide information in relation to crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission and to facilitate access by victims to victim assistance programmes, in cases where the serious crime was committed within the scope of application of the Act.

67. Mexico could respond to requests by host States for support and assistance provided that such requests were made within the framework of a treaty on extradition or on mutual legal assistance that was applicable to the situation in question. Mexico had signed 33 extradition treaties and 27 treaties on legal assistance.[2] The International Extradition Act also foresaw the possibility of cooperation with a third country upon certain requirements being satisfied and on the basis of reciprocity.

68. **Paraguay** stated that its Constitution enshrined the principles of solidarity and international cooperation. Where immunities were implicated, if an official or expert on a United Nations diplomatic mission were to commit an act of a serious nature punishable abroad, the courts of receiving States would be competent to apply their respective laws. They must first inform the sending State through the diplomatic channel of the acts performed by the official on mission and as appropriate seek waiver of immunity. If the receiving State where the punishable act was committed does not conduct investigations to elucidate the facts or does not punish the perpetrator, the criminal law in force in the sending State may be applied to acts committed abroad by its nationals.

69. Under the Code of Criminal Procedure, officials on mission who commit offences outside the scope of their functions may be extradited provided that a request has first been made for a waiver of their immunities, in accordance with the treaty applicable in each case. If no treaty exists, the provisions of the Constitution on reciprocity must be followed.

70. Paraguay was party to several multilateral and bilateral agreements (with Colombia, Mexico, Panama, Peru and the Bolivarian Republic of Venezuela) on mutual assistance in criminal matters.

71. **Peru** noted that extradition procedures were established in its Code of Criminal Procedure and in Supreme Decree No. 016-2006-JUS relating to judicial and governmental procedure in respect of extradition and the transfer of convicted persons.

72. Moreover, in matters concerning international judicial cooperation, the Code of Criminal Procedure provided that the relations of the Peruvian authorities and foreign authorities and the International Criminal Court were governed by the

[2] See A/64/193, paras. 52 and 53, for previous information from Mexico.

treaties concluded by Peru and, in the absence of such treaties, by the application of the principle of reciprocity within a framework of respect for human rights.

73. Peru was a party to the Inter-American Convention on Mutual Assistance in Criminal Matters and had concluded 13 bilateral treaties on the subject with Colombia, El Salvador, the Plurinational State of Bolivia, Paraguay, Guatemala, Argentina, Brazil, Ecuador, Mexico, Canada, Switzerland, Italy and Spain.

74. The Code of Criminal Procedure also contained provisions relating to the protection of the integrity of victims and witnesses. Within that framework, in 2008, the Government Procurator's Office had established a national programme for the purpose of formulating and implementing measures of assistance for victims and witnesses involved in all types of investigations and criminal proceedings, and to prevent their testimony from being interrupted by factors beyond their control during the conduct of the proceedings and safeguard their physical, mental and social well-being. Moreover, law No. 29542 of 22 June 2010 was promulgated for the protection of whistleblowers in the administrative sphere and for effective collaboration in the criminal sphere, with the objective of protecting and assisting public officials and civil servants, or any citizen. Any well-founded denunciation of arbitrary or illegal acts occurring in any public entity may be investigated or penalized at the administrative level.

75. **Portugal** reiterated its position as reflected in document A/64/183, paragraph 54.

76. Articles 408 to 424 of the Penal Code of **Qatar** provide for extradition and international cooperation.

77. The **Republic of Korea**, in addition to reiterating the information contained in paragraph 48 of document A/63/260, noted that as at June 2010, it had concluded 25 treaties on extradition and 20 treaties on mutual legal assistance in criminal matters.

78. **Slovakia** noted that under section 3 of its Code of Criminal Procedure, a wide range of authorities, organizations and other persons had a duty to cooperate and provide assistance to law enforcement agencies, and that law enforcement agencies and the courts had a duty to assist each other, in the fulfilment of duties emanating from the law.

79. Moreover, under section 136, there was a duty to provide effective protection to victims, witnesses and other persons if their testimony could pose a reasonable threat to their life or physical integrity, or if such a threat was real in relation to a person in close relation to the witness.

80. **Slovenia** was a party to many international instruments adopted in the framework of different international organizations such as the United Nations, the Council of Europe and the European Union, and to bilateral treaties regulating international legal assistance, extradition and surrender. International legal assistance in criminal matters and extradition was regulated by the Criminal Procedure Act and the Act on International Cooperation in Criminal Matters between the member States of the European Union. It also provided international legal assistance where reciprocal arrangements existed. Such assistance included investigations, seizure of assets, collection of information, documents and evidence (including financial data) from financial institutions or other legal entities, collection of statements, sending originals or copies of relevant documents and other

items, the submission of legal documents, interviewing persons and experts and the identification, freezing and/or confiscation of property.

81. The Criminal Procedure Act of Slovenia also contained provisions on the protection of victims of crimes relating to their procedural status as witnesses, while its Witness Protection Act (2005) outlined the conditions to be met and the procedures to be followed for the protection of witnesses and other persons under threat owing to their participation in a criminal procedure. Moreover, its Act on Compensation to Crime Victims governed the right of victims of premeditated crimes and their relatives to compensation. The Act also gave effect to European Union Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

IV. Bringing credible allegations that reveal that a crime may have been committed by United Nations officials to the attention of States against whose nationals such allegations are made and matters related thereto

82. In operative paragraphs 9 to 13, 16 and 17 of General Assembly resolution 64/110, the Assembly requested the Secretary-General to provide certain information and the United Nations to take certain measures concerning the issue of criminal accountability of officials and experts on mission. These matters are addressed below.

Referrals in relation to officials

83. In paragraph 9 of the resolution, the Secretary-General is requested to bring credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations are made and to request from those States an indication of the status of their efforts to investigate and, as appropriate, prosecute crimes of a serious nature, as well as the types of appropriate assistance that States may wish to receive from the Secretariat for the purposes of such investigations and prosecutions. That request is similar to those made by the Assembly in paragraph 9 of its resolution 63/119 (see the report of the Secretary-General covering the period from 1 July 2008 to 30 June 2009 (A/64/183)) and in paragraph 9 of its resolution 62/63 (see the report of the Secretary-General covering the period from 1 July 2007 to 30 June 2008 (A/63/260)).

84. With respect to referrals of United Nations officials and experts on mission as requested in paragraph 9 of resolution 64/110, the information provided in the present report relates to the period from 1 July 2009 to 30 June 2010 and involves only United Nations officials, as there were no referrals of cases involving United Nations experts on mission. During this period, the Office of Legal Affairs referred to the States of nationality the cases of five United Nations officials for investigation and possible prosecution. Those cases included one in which an official employed as a security officer had allegedly stored his private firearm improperly in breach of the firearm storage certificate issued by the host country, which was also the official's State of nationality; the second involved allegations of fraud, conspiracy and embezzlement and conversion of funds by the official

concerned; the third involved allegedly fraudulent claims for rental subsidy by the concerned official; the fourth case related to the alleged purchase and export of diamonds by the concerned official (a United Nations volunteer deemed an official of the Organization under the relevant host country agreement); and the fifth case involved allegedly fraudulent claims for dependency entitlements and facilitation of visa applications by the concerned official.

Requests for indication of status and assistance that may be provided by the Secretariat

85. The United Nations has also enquired with concerned States of nationality about these cases. With the exception of one Member State, which is taking action in respect of the case within its own jurisdiction, the other Member States have not provided any information in response to the enquiries.

86. These enquiries follow earlier requests by the Secretariat for information from States of nationality on how they were handling previously referred cases (see A/64/183, para. 63). One State of nationality responded to the United Nations by requesting a copy of the United Nations investigation report in the case, and the United Nations provided the investigation report without prejudice to the Organization's privileges and immunities. No responses were received from other States of nationality concerning their handling of the cases referred to them by the United Nations.

Possible use by States exercising jurisdiction of information from United Nations investigations

87. In paragraph 10 of its resolution 64/110, the General Assembly requests the United Nations, when its investigations into allegations suggest that crimes of a serious nature may have been committed by United Nations officials or experts on mission, to consider any appropriate measures that may facilitate the possible use of information and material for purposes of criminal proceedings initiated by States, bearing in mind due process considerations. In the same vein, in paragraph 12 of that resolution, the Assembly urges the United Nations to continue cooperating with States exercising jurisdiction in order to provide them, within the framework of the relevant rules of international law and agreements governing activities of the United Nations, with information and material for purposes of criminal proceedings initiated by States.

88. In this regard, it is important to recall that the legal framework within which the referrals are made by the United Nations and the role of the Secretary-General have been outlined in section IV of the Secretary-General's report on criminal accountability of United Nations officials and experts on mission (A/63/260).

89. The United Nations cooperates with law enforcement and judicial authorities of relevant Member States in accordance with its rights and obligations under the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, as well as other relevant international agreements and applicable legal principles. Accordingly, the Organization will release documents and/or information and waive immunity on a case-by-case basis where, in the opinion of the Secretary-General, immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. Consequently, information obtained by the United Nations may be provided to the

relevant authorities, and documents may be shared, subject to consideration of confidentiality and privileges and immunities. Documents may be redacted where necessary. It should be noted that, since the United Nations does not have any criminal investigative or prosecutorial jurisdiction, the use of any United Nations-provided documents or information, including their admissibility in any legal proceedings, is a matter for determination by the relevant judicial authorities to whom such documents or information have been provided.

Protection of United Nations officials and experts on mission from retaliation

90. In paragraph 11 of its resolution 64/110, the General Assembly encouraged the United Nations, when allegations against United Nations officials or experts on mission were determined by a United Nations administrative investigation to be unfounded, to take appropriate measures, in the interests of the Organization, to restore the credibility and reputation of such officials and experts on mission.

91. Moreover, paragraph 13 emphasized that the United Nations, in accordance with the applicable rules of the Organization, should take no action that would retaliate against or intimidate United Nations officials and experts on mission who report allegations concerning crimes of a serious nature committed by United Nations officials and experts on mission.

92. In this regard, United Nations officials who report misconduct by other United Nations officials or experts on mission are protected against retaliation under the staff regulations, rules and relevant administrative issuances. In particular, the Secretary-General issued bulletin ST/SGB/2005/21, entitled "Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations", with the objective of enhancing protection for individuals who report misconduct or cooperate with duly authorized audits or investigations. In addition, it should be noted that staff members may appeal against any retaliatory measure through the internal justice system.

V. Information on how the United Nations might support Member States, at their request, in the development of domestic criminal law relevant to crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission

93. In paragraph 17 of resolution 64/110, the General Assembly requested the Secretary-General to include in his report information on how the United Nations might support Member States, at their request, in the development of domestic criminal law relevant to crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission.

94. At the national level, the United Nations conducts programming to strengthen the rule of law, and in particular criminal justice systems, in over 120 Member States in every region of the world. The scope of the involvement is wide and includes assessments, programme delivery, technical cooperation and capacity development in accordance with national policies, priorities and plans.

95. The United Nations is therefore positioned to support Member States, at their request, in the development of domestic criminal law relevant to crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission. Building on its experience and expertise, the United Nations Office on Drugs and Crime, in particular, is well placed to provide assistance in the drafting of legislation on issues regarding the criminalization of conduct of a serious nature, jurisdiction, investigation, international cooperation, immunity/impunity and civil and financial liability as they relate to United Nations officials and experts on mission committing these serious crimes.

96. Technical assistance could also support the development and strengthening of national capacities to investigate and prosecute serious crimes, especially in the context of mutual legal assistance and extradition. Possible activities in this regard would include the establishment and strengthening of national authorities focused on cross-border partnerships, training for law enforcement and prosecution authorities and defence attorneys on both domestic and international investigations, and training on the use and application of electronic tools such as the Mutual Legal Assistance Request Writer Tool.

97. Member States may request, as appropriate, such support through the United Nations Development Programme (UNDP), the Organization's global development network which supports access to justice initiatives and the strengthening of justice systems worldwide. To enhance the rule of law assistance the United Nations provides to Member States in this field, UNDP and the United Nations Office on Drugs and Crime signed a memorandum of understanding in December 2008 that emphasizes consistency, coherence and accuracy of technical assistance delivery, sharing of best practices, enhanced coordination of services and the exchange of technical expertise between the two, drawing on each other's comparative advantage.

VI. Taking other practical measures to strengthen existing training on United Nations standards of conduct, including through predeployment and in-mission induction training

98. The Department of Peacekeeping Operations and the Department of Field Support continued in 2009-2010 to pursue their efforts to ensure adherence to the code of conduct and related rules, Secretary-General's bulletins and administrative instructions through mechanisms aimed at preventing misconduct. Training and awareness-raising on United Nations standards of conduct remain at the centre of the preventative measures adopted by the various peacekeeping operations and special political missions.

99. The Conduct and Discipline Unit in the Department of Field Support at Headquarters and conduct and discipline teams in the field act both independently and collaboratively to deliver or facilitate training on misconduct for all categories of personnel. Presently, there are 14 conduct and discipline teams covering 19 peacekeeping missions and special political missions.

Training at Headquarters and predeployment training

100. The Conduct and Discipline Unit, in coordination with the Integrated Training Service, developed the second edition of the core predeployment training material on conduct and discipline, which was launched in December 2009. The material has been rolled out to Member States and will be used for mandatory predeployment training for all peacekeeping personnel.

101. Troop-contributing countries are responsible for providing mandatory predeployment training to military personnel. Police-contributing countries are equally responsible for such predeployment training for United Nations police and formed police units. This training is usually delivered by peacekeeping training institutions operating on a national, regional or subregional basis. The Integrated Training Service at the United Nations Logistics Base in Brindisi, Italy, is responsible for ensuring the mandatory predeployment training of all international civilian staff. Two predeployment training courses for civilian personnel were piloted at the Entebbe Support Base in Uganda in November and December 2009.

102. The Conduct and Discipline Unit trained potential and already recruited senior leaders in two senior leadership induction programmes. These training courses are designed to emphasize the role and duties of heads of mission and other senior leaders to ensure the highest standards of conduct and to better prepare them to address conduct and discipline issues. In addition, the Unit provided frequent briefings on conduct and discipline matters to specialized groups of personnel. The annual workshop for Unit staff and chiefs of conduct and discipline teams was held in May 2010. The workshop identified strategic priorities in the new context of peacekeeping and updated chiefs on recent policy and legislative developments that have an impact on field procedures.

103. Follow-up training was held for peacekeeping mission focal points on the misconduct tracking system, a secure, Web-based system designed to record, track and report on allegations of misconduct by peacekeeping personnel.

Training in peacekeeping missions

104. The Conduct and Discipline Unit, in consultation with conduct and discipline training focal points in the missions, developed new core induction training material on conduct and discipline. A training of trainers workshop was held in Brindisi in November 2009. The new material, which will be adapted with mission-specific information for all peacekeeping personnel, has been piloted in the Central African Republic, Chad, Timor-Leste, Lebanon, Liberia and Western Sahara.

105. All categories of personnel receive conduct and discipline training once deployed to peacekeeping missions. This training is provided by conduct and discipline teams and integrated mission training cells or training cells for specific categories of personnel.

106. Training on sexual exploitation and abuse and the code of conduct has been emphasized for all categories of personnel as part of the Department of Field Support preventive strategy. The vast majority of peacekeeping personnel in missions has attended such training. Refresher and ongoing training, training of trainers and technical assistance on measures to prevent sexual exploitation and abuse are also provided.

107. Conduct and discipline teams have developed awareness-raising campaigns to inform the host population about United Nations codes of conduct and the United Nations zero-tolerance policy on sexual exploitation and abuse. Outreach activities and assessment visits within their respective mission areas have allowed conduct and discipline teams to identify emergent needs.